

603, FR03 067 329
OhioEPA
State of Ohio Environmental Protection Agency

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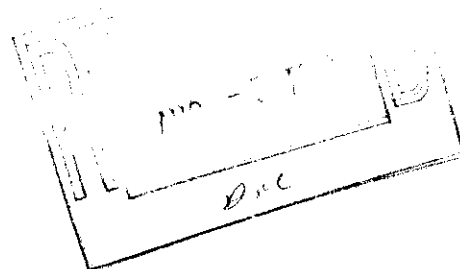
George V. Voinovich
Governor
Donald R. Schregardus
Director

May 20, 1992

Re: Director's Final Findings & Orders
U.S. Department of Energy
Portsmouth Enrichment Office
U.S. EPA ID No.: OH7890008983

CERTIFIED MAIL

U.S. Department of Energy
Portsmouth Enrichment Office
Attn: Mr. Eugene Gillespie
U.S. Route 23 South
Piketon, Ohio 45661



Dear Mr. Gillespie:

Transmitted herewith are Final Findings & Orders of the Director concerning the matter indicated.

Very truly yours,

Thomas E. Crepeau

Thomas E. Crepeau, Manager
Data Management Section
Division of Hazardous Waste Management

TEC/dhs

cc: Brian Babb, Legal Supervisor
Mark Navarre, Legal
Dave Sholtis, Asst. Chief, DHWM
Mike Savage, Asst. Chief, DHWM
Pamela Allen, Manager, CM&ES, DHWM
Ed Lim, Manager, RCRA Eng. Section, DHWM
Thomas Winston, Chief, SWDO
Donna Goodman, SEDO, DHWM

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I certify this to be a true and accurate copy of the
 record as filed in the records of the Ohio
 Environmental Protection Agency.

By: William Mackey Date 5/8/92

Issuance Date MAY 08 1992

Effective Date MAY 08 1992

**BEFORE THE
 OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of

U.S. Department of Energy
 Portsmouth Enrichment Office
 U.S. Route 23 South
 Piketon, Ohio 45661

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:

Director's Final
 Findings and Orders

Respondent

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 OHIO DIRECTOR'S OFFICE

PREAMBLE

It is hereby agreed by and among parties hereto as follows:

I. JURISDICTION

These "Director's Final Findings and Orders" ("Orders") are issued to the U.S. Department of Energy ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under sections 3734.13 and 3745.01 of the Ohio Revised Code ("ORC").

II. PARTIES

These Orders shall apply to and be binding upon the Respondent, its agents, assigns, successors in interest, and its co-operator, Martin Marietta. No change in ownership relating to the Facility will in any way alter the Respondent's responsibilities under these Orders. The Respondent's obligations under these Orders may only be altered by the written approval of the Director of the Ohio EPA.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as used in Chapter 3734. of the ORC and the regulations promulgated thereunder.

IV. FINDINGS OF FACT

The Director of the Ohio EPA has determined the following findings of fact:

1. Respondent owns a 16.2 square kilometer site located approximately 20 miles north of Portsmouth, Ohio in Pike County on which it operates a gaseous diffusion facility to enrich uranium for military and commercial use ("Facility").
2. The Respondent is a "person" as defined in sections 1.59 and 3734.01 of the ORC and rule 3745-50-10 of the Ohio Administrative Code ("OAC").
3. At the Facility, the Respondent generates "hazardous waste" as that term is defined by section 3734.01 of the ORC and rule 3745-51-03 of the OAC.
4. On August 18, 1980, the Respondent notified the United States Environmental Protection Agency ("US EPA") of its hazardous waste activity at the Facility and was issued US EPA Identification Number OH7890008983.
5. By letter dated May 1, 1992, the Respondent notified the Director of the Ohio EPA that, at the Facility, Respondent is continuously generating and storing wastes subject to OAC rule 3745-59-30 (solvent wastes), OAC rule 3745-59-32 (California List wastes), OAC rule 3745-59-33 (first third wastes), OAC rule 3745-59-34 (second third wastes) and OAC rule 3745-59-35 (third third wastes), hereinafter referred to as land disposal restricted ("LDR") hazardous and mixed wastes. The Respondent has represented to Ohio EPA that there are no immediate treatment or disposal options in the United States for these LDR hazardous and mixed wastes. The Respondent also has represented that solvent wastes, California List wastes and first and second third wastes have been stored at the Facility for greater than one year and such storage may not be in compliance with Ohio's hazardous waste laws and regulations. The Respondent also has represented that after May 8, 1992 it may not be in compliance with the LDR storage requirements for third third wastes.
6. The Respondent has represented to Ohio EPA that it desires to comply with the land disposal restriction requirements cited above and to that end requested from Ohio EPA that the Respondent enter into an interim arrangement with Ohio EPA under which the Respondent could continue operations pending negotiations for a long term resolution.
7. Pursuant to ORC Section 3734.02 (G), the Director of Environmental Protection ("Director") may by order exempt any person generating, storing, treating, or disposing of hazardous wastes in such quantities or under such circumstances that, in the determination of the Director, it is unlikely that the public health or safety or the environment will be adversely affected thereby, from any requirement to obtain a permit or license, or comply with the manifest system or other requirements of ORC Chapter 3734.
8. If the Respondent conducts its storage activities in accordance with the Orders herein, it is unlikely that the public health or safety or the environment will be adversely affected.

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 as filed in the records of the Ohio
 Environmental Protection Agency.

C. H. Mackey Date 5/8/92

9. This action is consistent with, and equivalent to, the regulations promulgated by the Administrator of the United States Environmental Protection Agency under the "Resource Conservation and Recovery Act of 1976," 90 Stat. 2798, 42 U.S.C. Section 6921, et seq., as amended.

V. ORDERS

1. An exemption from the prohibition on storage of LDR hazardous wastes, as set forth in OAC rule 3745-59-50, is hereby granted to Respondent and its co-operator, Martin Marietta, to store LDR hazardous and mixed wastes in containers, at the Facility, provided that the Respondent and its co-operator, Martin Marietta, comply with the following rules of the OAC which are incorporated herein by reference:

- 3745-65-14 - Security
- 3745-65-15 - General Inspection Requirements
- 3745-65-17 - General Requirements for Ignitable, Reactive or Incompatible Waste
- 3745-65-31 - Design and Operation of Facility
- 3745-65-32 - Required Equipment
- 3745-65-33 - Testing and Maintenance of Equipment
- 3745-65-34 - Access to Communications or Alarm System
- 3745-65-35 - Required Aisle Space
- 3745-65-37 - Arrangements with Local Authorities
- 3745-65-55 - Emergency Coordinator
- 3745-65-56 - Emergency Procedures
- 3745-65-71 - Use of Manifest System
- 3745-65-73 - Operating Record
- 3745-65-74 - Availability, Retention and Disposition of Records
- 3745-65-75 - Annual Report
- 3745-66-11 - Closure Performance Standards
- 3745-66-14 - Disposal or Decontamination of Equipment, Structures and Soils
- 3745-66-71 - Condition of Containers
- 3745-66-72 - Compatibility of Waste with Containers
- 3745-66-73 - Management of Containers
- 3745-66-74 - Inspections
- 3745-66-76 - Special Requirements for Ignitable or Reactive Wastes
- 3745-66-77 - Special Requirements for Incompatible Wastes

2. The requirements of these Orders shall not apply to mixed wastes to the extent that a case-by-case extension to an effective date for such mixed wastes is approved by US EPA and such approval is recognized by the Director of Ohio EPA, as set forth in OAC rule 3745-59-05.

3. The requirements of these Orders shall apply only to LDR hazardous and mixed wastes which are generated at the Facility. No LDR hazardous wastes or mixed wastes shall be accepted from any other off-site generator or treatment, storage or disposal facility, with the exception of incinerator ash from the treatment of LDR hazardous and mixed wastes which are generated at the Facility and treated at the Department of Energy's incinerator at Oakridge, Tennessee.

C. J. Mackey

Date 5/8/92

I certify that to be a true and accurate copy of the original as filed in the records of the Ohio Department of Energy.

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U.S. DEPARTMENT OF ENERGY

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4. The Respondent, by its acceptance of this exemption, agrees to comply with all conditions of the exemption and acknowledges that the Respondent's failure to so comply may result in immediate revocation of this exemption and further legal action by Ohio EPA.
5. This exemption shall terminate ninety (90) days from the effective date of these Orders, unless the Director of Ohio EPA revokes these Orders prior thereto.

VI. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity by or against any person, firm, partnership or corporation, not a signatory to these Orders, for any liability arising out of or relating to the operation of the Respondent's hazardous waste facility.

VII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations and any applicable administrative or judicial consent order or decree. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to the Respondent's operation of its hazardous waste Facility. The Ohio EPA reserves all rights and privileges except as specified herein.

VIII. NOTICE

All documents demonstrating compliance with these Orders and other documents required under these Orders to be submitted to the Ohio EPA shall be addressed to:

Ohio Environmental Protection Agency
Southeast District Office (SEDO)
Division of Hazardous Waste Management
2195 Front Street
Logan, Ohio 43138
Attn: RCRA Group Leader

and

Ohio Environmental Protection Agency
Division of Hazardous Waste Management
1800 WaterMark Drive
P. O. Box 1049
Columbus, Ohio 43266-0149
Attn: Manager, Compliance Monitoring and Enforcement Section

I certify this to be a true and accurate copy of the
document as filed in the records of the Ohio
Environmental Protection Agency.

Officer Mackey Date 5/8/92

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or to such persons and addresses as may hereafter be otherwise specified in writing.

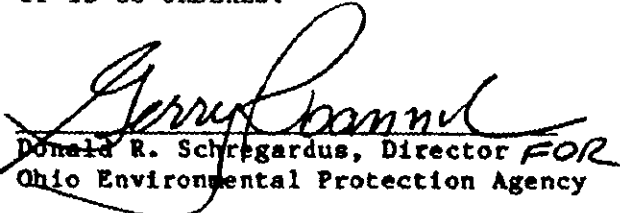
IX. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including penalties against the Respondent and its co-operator, Martin Marietta, for noncompliance with these Orders. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require the Respondent and its co-operator, Martin Marietta, to perform additional activities pursuant to Chapter 3734. of the ORC or any other applicable law in the future. Nothing herein shall be construed as an admission by Respondent or otherwise restrict the right of the Respondent to raise any administrative, legal or equitable claim or defense with respect to such further actions which the Ohio EPA may seek to require of the Respondent. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders (i.e., any violations other than LDR storage violations of OAC rule 3745-59-50 which occur between May 8, 1992 and the date that these Orders terminate.)

X. SIGNATORIES

Each signatory to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such signatory to this document.

IT IS SO ORDERED:


 Donald R. Schregardus, Director FOR
 Ohio Environmental Protection Agency

5/8/92
 Date

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XI. WAIVER

The Respondent agrees that these Orders are lawful and reasonable, that the schedules provided herein are reasonable and that the Respondent agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for the Respondent's liability for the LDR storage violations of OAC rule 3745-59-50 which occur at the Facility between May 8, 1992 and the date that these Orders terminate.

The Respondent hereby waives the right to appeal the issuance, terms and service of these Orders and it hereby waives any and all rights it might have to seek judicial or administrative review of said Orders either in law or equity. The Respondent expressly waives any and all rights it has to request

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Date 5/8/92

By: *Alvin Nuckey*

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an adjudication hearing of any proposed revocation of these Orders or to appeal any final action of the Director revoking these Orders.

Notwithstanding the preceding, the Ohio EPA and the Respondent agree that in the event that these Orders are appealed by any other party to the Environmental Board of Review, or any court, the Respondent retains the right to intervene and participate in such appeal. In such event, the Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

IT IS SO AGREED:

The U.S. Department of Energy

By: Eugene W. Jellison

5/8/92
Date

Title: Site Manager

Ohio Environmental Protection Agency

Gerry Doan
Donald R. Schregardus FOR
Director

5/8/92
Date

A true and accurate copy of the
above is to be placed in the records of the Ohio
Environmental Protection Agency.

C. J. Mackey Date 5/8/92

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